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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,905	07/11/2003	David G. Barkalow	1391/1559	4960
28455 7590 06/19/2007 WRIGLEY & DREYFUS 28455 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER CORBIN, ARTHUR L	
			ART UNIT 1761	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/617,905
Filing Date: July 11, 2003
Appellant(s): BARKALOW ET AL.

MAILED
JUN 15 2007
GROUP 1700

Steven Shurtz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 8, 2007 appealing from the Office action mailed June 19, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

4,238,510

CHERUKURI ET AL

12-1980

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (4,317,838) or Cherukuri et al (4,238,510). Both Cherukuri et al patents disclose coating a chewing gum core by applying thereto a plurality of alternating layers of coating syrup and dusting mix in at least 12 separate coating operations, wherein the coating syrup includes 30-70% sorbitol and/or maltitol, 5% gum arabic, a high-intensity sweetener and a flavor and wherein the dusting mix includes 40-90% sorbitol and/or maltitol, up to 20% calcium carbonate filler and a flavor. Finding the optimum amount of filler (calcium carbonate) in the dusting mix to be applied to the gum core would require nothing more than routine experimentation by one reasonably skilled in this art. It is totally expected that increasing the amount of filler will reduce the cost of the coating since filler is less expensive than sweetener.

(10) Response to Argument

Although Cherukuri et al does not mention cost savings per se by use of the calcium carbonate filler disclosed therein, as appellant argues, such cost savings would have been obvious to the skilled artisan since calcium carbonate filler is less expensive than the sweetener used in Cherukuri et al.

Appellant concludes, as the main point of argument, that an "unexpected discovery" has been made by the present invention. Appellant goes on to explain this in terms of technological advantages achieved by the claimed invention. Such

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technological advantages enumerated by appellant include "crunchier coating", "increased corner strength", "less corner chipping", "smoothness", "uniform color" and shape retaining of the gum core. Each of these advantages are also apparent in the chewing gum products prepared in either primary reference, especially since each of these listed advantages is couched in relative terms without any clear and/or definite meaning in the art. There is certainly no supporting factual evidence of record to support appellant's conclusion of "unexpected discovery". Appellant's Exs. 1 and 2 in the specification do not provide a comparison with the closest prior art, as applied in the above rejection, wherein 20% calcium carbonate filler may be used. Rather, said examples only make a comparison with a dusting mix which contains no filler. While such a comparison may show that the use of a filler allows appellant to achieve some improved results, it clearly does not overcome the prima facie case of obviousness established in the above rejection.

Further, although the 65% maltitol used in the syrup of either Cherukuri et al patent (col. 3, lines 5-15 of '838 and col. 2, lines 50-55 of '510) is less than the over 80% maltitol claimed in appellant's claim 14, as appellant argues on pages 11-12 of the brief, appellant has again failed to support the conclusion of improved results, for the "over 80%" claimed amount of maltitol, with any factual evidence of record. In the absence of such evidence, said amount is not deemed to be critical.

Appellant finally concludes, on page 12 of the brief, that the applied art does not suggest using maltitol syrup to make the coating syrup used in the process disclosed in

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said applied art. In this regard, appellant is referred to Cherukuri et al ('838, col. 3, line 14) and Cherukuri et al ('510, col. 2, line 35).

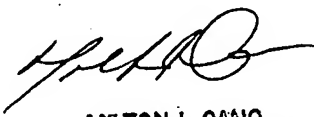
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Arthur L. Corbin


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
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Conferees:

Milton Cano

Gregory Mills


GREGORY MILLS
QUALITY ASSURANCE SPECIALIST

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line.

Arthur L. Corbin
Primary Examiner
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